



IN THE
Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-123

EDELMIRO MARTINEZ RIVERA

Petitioner,

v.

HECTOR A. COLON CRUZ, JOSE TRIAS MONGE,
CARLOS V. DAVILA, HIRAM TORRES RIGUAL,
ANGEL M. MARTIN, JORGE DIAZ CRUZ, CARLOS J.
IRIZARRY YUNQUE, AND ANTONIO S. NEGRON
GARCIA, INDIVIDUALLY

Respondents.

**ON PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME
COURT OF THE COMMONWEALTH OF
PUERTO RICO**

RESPONDENTS' BRIEF IN OPPOSITION

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**RESPONDENTS' BRIEF IN OPPOSITION
 TO THE HONORABLE COURT:**

Now come respondents through their undersigned attorneys and respectfully pray that the Writ of Certiorari requested by Petitioner to review the Resolution of the Supreme Court of the Commonwealth of

Puerto Rico rendered in the present case on February 1, 1979, be denied.

RESOLUTION BELOW

Respondents adopt the references made by petitioner at page 2 of his petition as to the judgment of the Superior Court of Puerto Rico, San Juan Part, in Civil Action Number 77-8122 (905)¹ and to the unreported Resolution of the Supreme Court of the Commonwealth of Puerto Rico in case number 0-78-4 rendered on February 1, 1979.²

STATEMENT OF THE CASE

On September 29, 1977, the Supreme Court of Puerto Rico entered judgment suspending petitioner herein from the practice of law for a period of six months. In its per curiam opinion, the Supreme Court (1) adopted the findings of fact of the Special Commissioner who heard and received the evidence presented in the disciplinary proceedings against petitioner and (2) decided that he had violated Canon 21 of the Code of Professional Ethics which provides that "the lawyer has the obligation to represent his client with complete loyalty", and specifically states that "no lawyer should accept employment when his professional judgment might be affected by his personal interests". See 4 L.P.R.A., Vol. 1A, 1977 Cum.

¹ Petition, Appendix A, pp. 1a through 2a.

² Petition, Appendix B, pp. 2a through 3a. Respondents want to call the attention of this Honorable Court as to the fourth paragraph of Appendix B. The last sentence of said paragraph shall read as follows: "Its decisions may only be reviewed by the Supreme Court of the United States under certain circumstances, 28 U.S.C. §1258".

Supp., App. IX, C 21, p. 500. The Supreme Court also decided that Petitioner had used disrespectful language directed against a Superior Court judge. But in view of the circumstances which gave rise to petitioner's expressions, the Court determined that no sanction other than an admonition was justified.

Petitioner filed two successive petitions for reconsideration of the suspension judgment before the Supreme Court of Puerto Rico on October 14 and October 26, 1977.

In both petitions for reconsideration he claimed that said judgment violated his rights under the Constitution of the United States. He specifically alleged that it violated (1) his "... inalienable right ... to be protected against abusive attacks on his honor, reputation and private life ... a fundamental right guarantee to [Petitioner] by the Constitution and the laws of the United States ..."; (2) his rights under "... the constitutional presumption of innocence ... fair treatment and due process of law ... guaranteed by the Constitution and the laws of the United States ..."; and (3) his rights under Article IV, Section 2 of the Constitution of the United States and under the Fourteenth Amendment thereto. Petitioner also alleged in his petitions for reconsideration that Canon 21 of the Puerto Rico Code of Professional Ethics violated the privileges and immunities guaranteed by the Constitution and the laws of the United States; that its provisions are "... too vague, obscure, uncertain and ill-defined to be considered constitutionally valid for the purpose of punishing the attorneys that may infringe it", and it is "so fluid" that "it fails to give an attorney an idea of the punishment he risks by infringing it ...". The Supreme Court of Puerto Rico denied on the merits both petitions for reconsideration.

Rather than attempting to obtain direct review by this Honorable Court through certiorari under 28 U.S.C. §1258(3) on November 29, 1977 petitioner filed the action herein involved before the San Juan Part of the Superior Court of the Commonwealth of Puerto Rico, which is a court inferior to the Supreme Court of Puerto Rico. The action filed by petitioner before the Superior Court of Puerto Rico, was brought against the Justices of the Supreme Court of Puerto Rico. He sought the Superior Court to declare null and void the final disciplinary judgment of the Supreme Court of Puerto Rico and to enjoin its effects. He also sought damages against the defendants for the amount of \$100,000.00.

The action before the Superior Court of Puerto Rico was not brought under 42 U.S.C. 1983 as it is incorrectly asserted by Petitioner at page 6 of his Petition.

On November 30, 1977 the Superior Court of Puerto Rico, *motu proprio*, dismissed the action for lack of jurisdiction.

On December 29, 1977 petitioner filed notice of appeal to the Supreme Court of Puerto Rico.³

³ Meanwhile, on December 9, 1977 petitioner herein filed another action before the Federal District Court for the District of Puerto Rico. The action before the Federal District Court was brought under 42 U.S.C. Sec. 1983 and its jurisdictional counterpart, 28 U.S.C. 1343(3)(4). It was brought against the Justices of the Supreme Court of Puerto Rico and he also prayed the Federal District Court to declare null and void the final disciplinary judgment of the Supreme Court of Puerto Rico.

In the complaint filed before the Federal District Court petitioner raised the same issues presented before the Supreme Court of Puerto Rico and before the Superior Court of Puerto Rico. He alleged, in general terms, that the suspension judgment deprived him of "... civil rights, privileges and immunities secured to him

On January 12, 1978 the Supreme Court of Puerto Rico ordered the petitioner to show cause why the appeal should not be dismissed for want of a substan-

by the Constitution and laws of the United States of America and the Constitution and laws of Puerto Rico." In support of this claim he specifically made the following allegations: (1) That defendants ordered the Solicitor General to file a complaint for disbarment against him after considering an investigation report submitted by the Attorney General regarding his professional conduct; (2) that defendants thereby determined the existence of cause to disbar him, and this action "... *ipso jure* disqualified the Honorable Judges defendants to intervene further in the case"; (3) that the second charge in the disbarment complaint [relating to the use of disrespectful language against a Superior Court judge] was barred by double jeopardy and *res judicata*, as well as by *laches*; (4) that defendants did not allow oral argument ("prior opportunity to be heard in a public session") on the Special Commissioner's findings of fact; and (5) that the Constitution of the Commonwealth of Puerto Rico does not grant the Supreme Court "... first instance jurisdiction to entertain, ventilate and decide disbarment proceedings as the one subject of this complaint ..."

Petitioner herein also alleged that the suspension judgment entered against him was based on the Canons of Professional Ethics adopted by the Supreme Court of Puerto Rico which suffer from constitutional infirmities described as follows: "... adopted by the Supreme Court of Puerto Rico, (1) with generalizations, (2) in vague, ambiguous, imprecise, confusing and contradictory language, with no guidelines, norms or standards of facts on which to rely for their reasonable observance and just application; (3) with no defined rule or principle of law to judge violation of the canons or measure the kind nor the extent (sic) of the punishment to which a lawyer that fails to observe any or all of the Canons may be subjected: (3) (sic) with no provision for a neutral forum separate from the Supreme Court itself for the procedural implementation of the Canons with the guarantees of impartiality, fairness and prurity (sic) required under the doctrines of due process of law and equal protection of the law; (4) (sic) that allow the Supreme Court of Puerto Rico to claim and exercise inherent and unrestrained power to investigate the personal and professional conduct of lawyers, to determine probable cause on evidence of infringement submitted; to characterize

tial constitutional question. On February 2, 1978, petitioner filed his show-cause paper.

lawyers (sic) conduct on the score of taste, civility, morality, or ethics without facts on which each characterization applies; to institute disciplinary proceedings, to hear and adjudicate the complaints or accusations presented, as well as to impose at its will or whim any punishment or penalty that it sees fit regardless of an intentional or involuntary fault, without right of recourse by the lawyer found guilty."

On the basis of such allegations, petitioner claimed that the disciplinary judgment entered by the defendants against him "... is inherently null and void as being a judgment reached and entered without jurisdiction and/or in gross violation and curtailment of basic human rights, privileges and immunities, guaranteed to the plaintiff by the Constitution and laws of the United States of America and the Commonwealth of Puerto Rico ..." Plaintiff also stated that he had "... repeatedly alleged and claimed to the defendants that the per curiam opinion and judgment they entered in the disbarment proceeding referred to above is inherently null and void ..." because of said constitutional infirmities.

Plaintiff finally alleged, in the two concluding paragraphs of the complaint, (1) that he had "... exhausted with no avail all remedies at his disposal under the Constitution and laws of the Commonwealth of Puerto Rico for vindication on his inalienable rights and remedies as an American citizen"; (2) that he would suffer irreparable damages as a result of his suspension; and (3) that he would also be deprived, if forced to comply with the judgment of suspension, of "... his constitutional rights, among others of freedom of speech and expression, freedom of association and to contract and render his professional services to whoever (sic) he chooses ... of his livelihood, liberty or property without due process of law or denied equal protection of the law."

The District Court issued an order to show cause why plaintiff's request for injunctive relief should not be granted, set a consolidated preliminary and permanent injunction hearing for January 19, 1978, ordered that a pretrial conference be held prior thereto, and instructed counsel for the parties to meet and prepare a pretrial order which would include a comprehensive stipulation of all uncontested facts. Such proposed pretrial order was

On December 11, 1978 petitioner moved the Supreme Court of Puerto Rico to set an oral hearing in the case.

On February 1, 1979, the Supreme Court of Puerto Rico denied the oral hearing and dismissed the appeal because it did not raise a substantial constitutional question. (See Petitioner Appendix B, pp. 2a through 3a).

On March 27, 1979 the petitioner moved the Supreme Court of Puerto Rico to reinstate the appeal. It was denied on April 5, 1979 and the present petition followed.

submitted by the parties at a pretrial conference held on January 16, 1978. All relevant facts involved in the litigation were stipulated, including pertinent documents relating to the disciplinary proceedings. Prior to the pretrial conference, defendants had filed their answer on January 12, 1978 raising several affirmative defenses: lack of jurisdiction, res judicata and collateral estoppel, judicial immunity and failure to state a claim upon which equitable or declaratory relief could be granted. In view of the pleadings and the stipulation of uncontested facts, defendants also moved for summary judgment on the basis of their four affirmative defenses.

The motion for summary judgment was denied and the hearing on the order to show cause was held on January 19, 1978. At said hearing the case was submitted for decision on the merits on the basis of the stipulations agreed upon between the parties and plaintiff's testimony relating to his good reputation. On January 27, 1978 the District Court issued an order dismissing the action for lack of jurisdiction on the authority of *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923). The reasons for dismissal were stated with particularity in an opinion entered on February 8, 1978.

Petitioner appealed from the dismissal of his action to the United States Court of Appeals for the First Circuit, which on December 1, 1978 issued the *per curiam* opinion that appears as Appendix to this Brief in Opposition, pp. A-1 through A-2. The Court of Appeals affirmed the judgment of the Federal District Court.

REASONS FOR DENYING THE WRIT

The Petition In The Instant Case Is Frivolous, It Does Not Present A Substantial Federal Question And The Certiorari Should Be Denied For Lack Of Jurisdiction

The jurisdiction of this Court was invoked under 28 U.S.C., Sec. 1258 (3).

Said statute states that:

"Final judgment or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

- (1)
- (2)
- (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States".

The present form was given to said statute in 1961 in order to eliminate the right to appeal from the Supreme Court of the Commonwealth of Puerto Rico to the Court of Appeals for the First Circuit and to provide that final judgments and decrees entered by the Supreme Court of Puerto Rico shall be reviewed instead by the Supreme Court of the United States.

The Judicial Conference and the Department of Justice supported the passage of this legislation, recognizing that in case involving a non-Federal question, the Court of Appeals for the First Circuit would not reverse the Supreme Court of Puerto Rico unless the decision is "inescapably wrong" or "patently erroneous". 1961 *U.S. Code Congressional and Administrative News*, page 2449.

It has been held repeatedly that the Supreme Court of Puerto Rico should not be reversed in a matter of local law unless the court's determination is "inescapably wrong" or patently erroneous". *Sancho Bonet v. Texas Co.*, 308 463 (1940); *De Castro v. Board of Commissioners*, 322 U.S. 451 (1944); *C. Brewer P.R. v. Corchado*, 303 F. 2d 654 (1962); *Acosta Marrero v. Commonwealth of Puerto Rico*, 275 F. 2d 294 (1960); *Fullana Corp. v. P.R. Planning Board*, 257 F. 2d 355 (1958); *Marquez v. Aviles*, 252 F. 2d 715 (1958); *Iglesias Acosta v. Secretary of Finance of Puerto Rico*, 220 F. 2d 651 (1955); *Sagastivelza v. P.R. Ins.*, 171 F. 2d 563 (1949); *Compose v. Central Cambalache, Inc.* 157 F. 2d 43 (1946)

This Court stated in *Fornaris v. Ridge Tool Co.* 400 U.S. 41 (1970) that:

"The relations of the federal courts to Puerto Rico have raised delicate problems. It is a Spanish-speaking Commonwealth with a set of laws still impregnated with the Spanish tradition. Federal Courts, were inclined to construe Puerto Rican Laws in the Anglo-saxon tradition which often left little room for the overtones of Spanish culture. Out of that experience grew a pronouncement by this court that a Puerto Rican court should not be overruled on its construction of local law unless it could be said to be 'inescapably

wrong'. See *Bonet v. Texas, Co.*, 308 U.S. 463, 471". (See also *Diaz Gonzalez v. Colon Gonzalez*, 536 F. 2d 453 (1976)).

In order to properly invoke the jurisdiction of this Honorable Court, petitioner must present a substantial federal question, not merely a frivolous or colorable one.⁴

Petitioner herein not only fails to present a substantial federal question, upon which this Honorable Court would have jurisdiction under 28 USC 1258 (3), but his petition is a frivolous one. Consequently, the certiorari should be denied for lack of jurisdiction.

On the contrary, the background of this case (see statement of the case and footnote 3, *supra*) demonstrates that the petition for a writ of certiorari presented in this case represents the most gross misuse by a claimant of the judicial proceedings.

The petition herein represents a new intent of the petitioner to attack the final judgment issued on September 29, 1977 by the Supreme Court of Puerto Rico suspending him from membership in the Puerto Rican bar for a period of six months.

When the Supreme Court of Puerto Rico considered the petitioner's disciplinary case and his constitutional claims, if he understood that a substantial federal question was involved in his case, he could have sought direct review in this Honorable Court. See Appendix to this Brief, pp. A-1 through A-2.

⁴ *Prensa Insular de Puerto Rico v. People of P. R.*, 189 F. 2d 1019 (1951); *Mercado v. Lluveras Pasarell*, 225 F. 2d 715, Cert. denied 350 U.S. 936

But he did not seek direct review in this Honorable Court. Rather he preferred to attack the final judgment of the Supreme Court of Puerto Rico through an injunctive and damages action before an inferior court of the judicial system of the Commonwealth of Puerto Rico, for the alleged deprivation of his civil rights.⁵

At the same time he collaterally attacked the judgment of the Supreme Court of Puerto Rico by filing an action before the Federal District Court for the District of Puerto Rico, raising the same issues previously presented and considered by the Supreme Court of Puerto Rico.⁶ The District Court dismissed the action for lack of jurisdiction and as barred by *res judicata*. By a *per curiam* judgment issued by the Court of Appeals for the First Circuit it affirmed the judgment of the District Court. See Appendix, pp. A-1 through A-2.

When the Court of Appeals for the First Circuit issued its judgment, once again, if petitioner herein understood that a substantial federal question was involved in his case, he could have sought direct review in this Honorable Court under 28 U.S.C. 1254, but he did not seek it.

Since the action that petitioner filed before the Superior Court of Puerto Rico was dismissed for lack of jurisdiction he appealed to the Supreme Court of Puerto Rico. Said appeal was dismissed by the Su-

⁵ The Supreme Court Justices, defendants in the instant case, are absolutely immune from liability for their judicial acts under the well-known doctrine of judicial immunity. *Pierson v. Ray*, 386 U.S. 547 (1967), cited with approval in *Stump et al v. Sparkman*, et al 435 US 349, 55 L Ed. 331 (1978).

⁶ Also the same issues raised before the Superior Court of Puerto Rico in this case.

preme Court of Puerto Rico because it did not raise a substantial constitutional question. Now petitioner questions the moral, legal and ethical capacity of the Justices of the Supreme Court of Puerto Rico to consider and decide his appeal.

Respondents respectfully submit that it is a frivolous allegation. First of all when petitioner voluntarily submitted his appeal to the Justices of the Supreme Court of Puerto Rico he was accepting the capacity of its Justices, as to all the effects to decide his appeal. If said Justices could not decide his appeal there would not be a court to adjudicate the case. Furthermore, the doctrine of the necessity calls for the consideration of the case, by the Justices of the Supreme Court, who were the only Justices empowered to decide the case.

Finally petitioner raises the issue of whether the Superior Court could dismiss *motu proprio* the petitioner's action because of lack of jurisdiction. As a matter of fact and law it could. In addition it is a matter of local law. And it has been ruled by this Honorable Court that where state decisions involve only questions of a local law, no substantial federal question is presented. *Black v. Cutter Laboratories*, 351 US 292, 299 (1956).

CONCLUSION

The present case does not present a substantial federal question, it is one of a frivolous nature and involves only issues of purely local law. For the foregoing reasons certiorari should be denied.

San Juan, Puerto Rico, August 24, 1979.

/s/ HECTOR A. COLON CRUZ
Hector A. Colon Cruz
Solicitor General

/s/ PEINA COLON DE RODRIGUEZ
Peina Colon De Rodriguez
Assistant Solicitor General

APPENDIX

United States Court of Appeals

FOR THE FIRST CIRCUIT

No. 78-1088

EDELMIRO MARTINEZ RIVERA,
Plaintiff, Appellant,

v.

JOSE TRIAS MONGE, et al.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT CIRCUIT
FOR THE DISTRICT OF PUERTO RICO

[HON. HERNAN G. PESQUERA, *U.S. District Judge*]

Before COFFIN, Chief Judge,
CAMPBELL and BOWNES, *Circuit Judges.*

Edelmiro Martinez.Jr., on brief for appellant.
Lino J. Saldana, Hector A. Colon Cruz, and Reina
Colon De Rodriguez on brief for appellees.

December 1, 1978

PER CURIAM. Appellant's complaint alleged that the members of the Puerto Rico Supreme Court, defendants-appellees, violated his constitutional rights in suspending him from membership in the Puerto Rican bar. The action

was brought under 42 U.S.C. § 1983 and grounded jurisdiction on 28, U.S.C. § 1343. The district court dismissed the action for lack of subject matter jurisdiction and as barred by res judicata.

The settled law, with which we agree, is "that disciplinary orders of the highest court of a state may be reviewed federally only in the Supreme Court by petition for certiorari and not by suits in the district courts."* *Grossgold v. Supreme Court of Illinois*, 557 F.2d 122, 125 (7th Cir. 1977); *Doe v. Pringle*, 550 F.2d 596 (10th Cir. 1976); *Mackay v. Nesbell*, 412 F.2d 846 (9th Cir. 1969); *Ginger v. Circuit Court for Wayne County*, 372 F.2d 621 (6th Cir. 1967). Cf. *In re MacNeil*, 266 F.2d 167, 172 (1st Cir. 1959) (noting that constitutional claims in state disbarment proceedings may be preserved for federal review by the Supreme Court under its certiorari jurisdiction but do not provide a basis for removal). This complaint in essence seeks review of a state court's disciplinary order, although it is couched in terms of a suit against the individual members of the court. Appellant "cannot invoke the provisions of § 1983 of the Civil Rights Act in federal district court so as to circumvent and avoid his obligation to seek direct review in the United States Supreme Court." *Doe v. Pringle*, *supra*, 550 F.2d at 599. We agree with the district court's dismissal for want of jurisdiction.

Affirmed.

* This rule might be questionable in no review of the constitutional issues were available in the state court. *Grossgold v. Supreme Court of Illinois*, 557 F.2d 122, 124 (7th Cir. 1977). Here, however, constitutional claims were presented to and considered by the Puerto Rico Supreme Court. Any particular claims that were not presented would be barred by the doctrine of res judicata. *Lovely v. Laliberta*, 408 F.2d 1261 (1st Cir.), *cert. denied*, 419 U.S. 1038 (1974).